Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 286.

CITY OF NEW ORLEANS, THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, AND GEORGE B. PENROSE, TREASURER OF THE CITY OF NEW ORLEANS, APPELLANTS,

VS.

MARY G. T. STEMPEL (WIFE OF EDWARD STEMPEL) GUARDIAN OF THE INFANTS, FANNY TOBIN McCAN ET ALS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE FIFTH CIRCUIT AND EASTERN DISTRICT OF LOUISIANA.

Brief on behalf of Mary G. T. Stempel, Guardian, Appellee.

All the assignments of errors in this case present but one question, and that is as to the validity and legality of the assessment upon property, consisting of negotiable notes, mortgages, bonds, etc., belonging to appellees who are non-residents of Louisiana.

I.

The assessment of the property belonging to the wards of appellee, in the name of the Estate of D. C. McCan, for the year 1896, was clearly illegal.

It is averred in the bill that "at the time said illegal assessment "was made by the Board of Assessors of the parish Orleans, as afore-"said, the estate of D. C. McCan had ceased to exist, the legal heirs,

"the infant wards of your oratrix above named, having been recog-
"nized and sent into possession thereof through your oratrix, as their
"guardian." (T. 3 and 4).

In the answer, defendants admit that the complainant and her wards were the sole legal heirs of the deceased, and as such sent into possession of the property.

The minors, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan and Charles Patterson McCan, were recognized as the sole legal and forced heirs of D. C. McCan, and through their guardian, Mrs. Mary G. T. Stempel, were put into possession of the property of said D. C. McCan by final judgment, signed on February 24th, 1896 (T. 48 and 49). This fact was made known to the Board of Assessors for the parish of Orleans on March 17th, 1896, when the assessment rolls were exposed for correction.

"Where the heirs have been put in possession of their father's
"and mother's estate by the probate court, the succession is termi-
"nated." Succ. of Dunford and Wife, 25 A. 56.

"When the widow and heirs were put in possession by order of
"court, the succession was closed; it was not thereafter in the power
"of the court to re-open it." Succession of Hacker, 28 A. 446; Beauregard vs. Lampton, 33 A. 827; Caire et al. vs. Judge, 43 A. 1136; Succession of McCan, 48 A. 145.

Due application was made by the complainant to the Board of Assessors of the parish of Orleans, and afterwards to the Committee of Assessments of the City Council, as prescribed by Section 26 of Act 106 of the General Assembly of Louisiana, of 1890, to have the assessment on real estate changed, and the assessment on notes, bonds, etc., cancelled. At the time of this application, the complainant representing her wards, had been sent into possession of the estate of the late D. C. McCan, and this judgment had been recorded; the assessment roll was not completed until the 1st of June, 1896. See Section 31 of said act.

"It would seem, then, that the assessor is expected to take notice
"of, and conform his rolls to recorded changes in titles as long as the
"rolls remain in his hands. The provision that transfers subsequent
"to the filing of the rolls are not to be regarded, seems to imply that
"those prior to that time must be. Up to the time of filing, the
"assessor has control of the rolls, and can alter them in all respects so
"as to conform to the facts. After they are filed, they pass from his
"control and he has nothing more to do with them." Saunders on Taxation, pp. 98 and 99.

II.

The property assessed and sought to be taxed consists of negotiable notes secured by mortgage, bonds, etc., all belonging to the infant wards of appellee, who, with appellee, their mother and guardian,

are domiciled in the county of Kings, State of New York. This fact is specially charged in the bill, and admitted in the answer. (T., pp. 1 and 2 and 14). The fact that these evidences of debt, choses in action, or, as they are called in Louisiana, "incorporeal rights," were at the time the assessment was made in the possession of an agent in New Orleans, in no manner affects the principle that they could only be taxed at the domicile of the owners, under the maxim, *mobilia sequntur personam.*

The incorporeal rights or intangible choses in action, sought to be assessed in this case, have no other *situs* than the domicile of the owners, which is in the State of New York. Debts are not property. State Tax on Foreign Held Bonds, 15 Wall. 300;

Murray vs. Charleston, 96 U. S. 432;

Kirtland vs. Hotchkiss, 100 U. S. 496;

Clason & Co. vs. City of N. O., 46 A. 1;

V. & A. Meyer & Co. vs. Sheriff, 41 A. 645;

Paving Co. et al. vs. City, 41 A. 1015;

Liverpool & London & Globe Ins. Co. vs. Board of Assessors, 44 A. 760;

Railey vs. Board of Assessors, 44 A. 765.

"Taxes imposed on a non-resident, whose property is not in the State are null, as tax laws can have no extra-territorial effect.

"Debts due to a non-resident (still in non-concrete form) have "their *situs* at the domicile of the creditor and not at the domicile "of the debtors."

The Liverpool & London & Globe Ins. Co. vs. Board of Assessors et al., not yet reported (Supreme Court of Louisiana).

The views expressed in the foregoing decisions were recognized by the Supreme Court of Louisiana, in the case of C. H. Parker, Tax Collector, vs. Strauss, 49 A. p. 1173.

III.

Two hundred and thirty thousand dollars of the property sought to be assessed is evidenced by State and city bonds. This is shown by the averments of the bill and the testimony of Albert Baldwin. The remainder consists of promissory notes, secured by mortgage, drawn by debtors residing in Louisiana, and held by the complainant, in her capacity as guardian. To permit the assessment on State and city bonds would impair the obligation of the contract, as held in 96 U. S., p. 432; and the other evidences of debt or incorporeal rights are *not* assessable in Louisiana—the owners thereof being domiciled in the State of New York.

The assessment stands in lieu of citation, and when shown to be erroneous and illegal, as in this case, all the subsequent proceedings had thereon are void.

IV.

The contention in the second assignment of errors that complainants are estopped from questioning the assessment, because (1) the taxes on other property assessed in the name of the estate of D. McCan, were paid by appellee is fallacious, for the reason, that although the assessment on this property was in the name of the estate of D. C. McCan, who was not, at that time, the owner, yet the property was liable to taxation, and the assessment could have been corrected by changing it to the name of complainant, as provided by section 11 of Act 106, of 1890, which reads as follows:

"*That if any* tract or lot of land, or other *property shall be* omitted "in the assessment of any year or series of years, or in any way *erro-* "*neously assessed, the same*, when discovered, *shall be assessed by the* "*assessor*, or tax collector, *for the whole period for which the same may* "*have been* omitted or *improperly assessed*, and shall be subject to the "State, parish and municipal taxes which have been or may here- "after be assessed against said property in accordance with law; pro- "vided, no back taxes for more than three years shall be assessed "against the property; and, provided further, that such assessment "shall appear upon a supplemental roll and be filed in the manner as "regulated by law."

It was unnecessary to do a vain and useless thing, which would not have resulted in any benefit whatever to complainants, as the property upon which they paid the taxes could have been correctly reassessed in their names.

2d. Moreover, the complainants are minors, and "minors can never be estopped." Zunts vs. Courcelle, 16 A. 98.

We, therefore, ask that the decree appealed from be affirmed with costs.

Respectfully submitted,

E. HOWARD McCALEB.